

NEW

NOTICE OF ACTION TAKEN

April 30, 1998

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This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of AMERICAN AIRLINES, INC. filed 10/2/97 in Docket OST-97-2965 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

(a) Scheduled foreign air transportation of persons, property and mail between (1) New York, Chicago, and San Juan, on the one hand, and Madrid, Spain, on the other; (2) points in the United States, via Madrid, and Alicante, Bilbao, Jerez de La Frontera, La Coruna, Las Palmas, Sevilla, Valencia, and Vigo, Spain; (3) points in the United States, via Madrid, and Marseilles, France and Porto, Portugal. American plans to operate this service under a code-share arrangement with Iberia Lineas Aereas de Espana (Iberia).

Application of IBERIA LINEAS AEREAS DE ESPANA, S.A. filed 3/13/98 in Docket OST-98-3626 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property and mail between Spain and Atlanta, Cleveland, Dallas/Ft. Worth, Denver, Detroit, Las Vegas, Minneapolis, New Orleans, Orlando, Philadelphia, Pittsburgh, Phoenix, San Diego, San Francisco, Seattle, St. Louis, Tampa, and Washington D.C. (through Reagan Washington National Airport). Iberia stated that it would operate these services via its existing U.S. gateways of Miami, New York, and Chicago under a code-share arrangement with American Airlines.

Joint Application of AMERICAN AIRLINES, INC. and IBERIA LINEAS AEREAS DE ESPANA, S. A filed 10/2/97 Undocketed for:

XX Statement of Authorization for American Airlines (and its regional affiliates Executive Airlines, Flagship Airlines, Simmons Airlines and Wings West Airlines) under Part 207 of the Department's regulations in order to:

Display Iberia's "IB" airline designator code on American's and/or American Eagle's flights in the following markets:

|  |  |  |
|--|--|--|
| Miami-Madrid   | Miami-Dallas/Ft. Worth<br>Houston<br>Orlando                 | Chicago-Atlanta<br>Boston<br>Cleveland<br>Dallas/Ft. Worth<br>Denver |
| Miami-Cancun, Mexico<br>Guatemala City, Guatemala<br>Managua, Nicaragua<br>Panama City, Panama | New York-Boston<br>Los Angeles<br>Philadelphia<br>Pittsburgh | Detroit<br>Houston<br>Las Vegas                                      |

|   |  |   |
|---|--|---|
| Miami- San Jose,. Costa Rica<br>(cont.) San Pedro Sula, Honduras<br>San Salvador, El Salvador | New York-San Francisco<br>(cont.) Washington<br>(Ronald Reagan Washington<br>National) | Chicago-Los Angeles<br>(cont.) Minneapolis/<br>St. Paul<br>New Orleans<br>Orlando<br>San Diego<br>St. Louis |
| Chicago-Philadelphia<br>(cont.) San Francisco<br>Tampa  | Chicago-Phoenix<br>Seattle<br>Washington<br>(Ronald Reagan Washington National)        |   |

The applicants stated that services operated beyond the U.S. gateways to points within the United States and Central America would be without local traffic rights for Iberia.

XX Statement of Authorization for Iberia and its regional affiliates under Part 212 of the Department's regulations to:

Display American's Airlines' "AA" designator code on Iberia's (and its regional affiliates Aviacion y Comercio and Air Nostrum Lineas Aereas del Mediterraneo) flights in the following markets:

|   |  |  |
|---|--|--|
| Madrid-New York<br>Chicago<br>Miami<br>San Juan | Madrid-Alicante, Spain<br>Barcelona, Spain<br>Bilbao, Spain<br>Jerez de La Frontera, Spain<br>La Coruna, Spain<br>Las Palmas, Spain<br>Malaga, Spain<br>Palma de Mallorca, Spain<br>Sevilla, Spain<br>Valencia, Spain<br>Vigo, Spain | Madrid-Geneva, Switzerland<br>Lisbon, Portugal<br>Marseille, France<br>Nice, France<br>Porto, Portugal<br>Rome, Italy<br>Vienna, Austria |
| Barcelona-New York<br>Miami                     |  |  |

The joint applicants stated that services operated within Spain and beyond Spain would be without local traffic rights for American.

Continental Airlines, Inc., Delta Air Lines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Air Europa, and the Government of Puerto Rico filed various pleadings to the applications for exemption and/or statements of authorization.<sup>1</sup> All of the responding U.S. carriers argued that the Department should deny or defer the requests to operate code-share services in the U.S.-Central America market or, alternatively should consolidate the applications into the American/TACA case (Docket OST-97-1700) because they raise competitive concerns related to those at issue in the American/TACA case. They also raised concerns regarding American's proposed equity investment in Iberia and urged that this request be considered in a single proceeding with other requests of American involving alliance/investment arrangements such as the American/British Airways case. In addition, all of the responding U.S. carriers, except TWA, opposed award of any extrabilateral authority involved in the code shares on the basis that there is insufficient reciprocity on the part of Spain to support such awards. In this regard, United and Delta both cite denials by Spain of third-country code-share services proposed by the carriers.

<sup>1</sup> We have not considered the pleading stricken from the record by Order 98-1-18.

American and Iberia replied that the majority of their code-share application was consistent with the aviation agreement and that given the modest size of the extrabilateral authority at issue, there was a sufficient basis to grant the applications. They further argued that their relationship was not an alliance, but rather a standard code-share arrangement; that they would continue to be competitors in both U.S.-Spain and U.S.-Central America markets; and that American's potential investment in Iberia would be minor and not controlling. In these circumstances, the joint applicants argued that there is no basis to consolidate the American/Iberia code-share request into any other proceedings pending before the Department involving American's relationships with other foreign carriers.

Air Europa does not oppose the applications provided that its similar application to code share with TWA (Dockets OST-97-3069 and 97-3070 and Undocketed) is also granted.

The Government of Puerto Rico supported the American/Iberia code-share arrangement insofar as it would benefit service to San Juan.

Applicant reps: Carl B. Nelson, Jr. (202) 496-5647 (AA) DOT Analyst: Gerald Caolo (202) 366-2406  
William Karas (202) 429-6223 (Iberia)

#### **D I S P O S I T I O N**

**XX Granted in part, subject to conditions discussed below (See attached list)**

**XX Deferred Statement of Authorization to American with respect to Miami-Central American points, see below**

**XX Balance Dismissed (extrabilateral authority and France points), see below**

The above action with respect to American's exemption request and Iberia's exemption request was effective when taken: April 30, 1998, thru April 30, 1999

The above action approving the statements of authorization was effective when taken: **April 30, 1998,** and will remain in effect indefinitely, subject to the conditions listed below.

**XX Under assigned authority (14 CFR 385) by:** **Paul L. Gretch, Director**  
**Office of International Aviation**  
(Petitions for review may be filed from now until  
10 days after the confirming order/letter issues.  
Filing of a petition shall not stay the effectiveness of this action.)

**XX Authority granted is consistent with the air transport agreement between the United States and Spain.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX Holder's certificate of public convenience and necessity (American)**

**XX Holder's foreign air carrier permit (Iberia)**

**XX Standard Exemption Conditions (attached)**

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**Conditions:** The statements of authorization granted are subject to the following conditions:

- (a) The statements of authorization will remain in effect only as long as (i) American and Iberia and their regional affiliates continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.
- (b) American and/or Iberia must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating all or any portion of the approved code-share services.
- (c) The code-sharing operations authorized must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are further expressly conditioned upon the requirement that the foreign air transportation in question be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere; that the carrier selling such transportation (i.e. the carrier shown on the ticket) accept all obligations established in the contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.
- (d) No more than two points in Spain may be served on any flight. Service beyond Madrid to the authorized European countries is limited to services from U.S. points for which American holds the necessary underlying authority.
- (e) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

The exemption authority granted Iberia is subject to the following condition:

Iberia's authority to serve Atlanta, Cleveland, Denver, Detroit, Las Vegas, Minneapolis, New Orleans, Orlando, Philadelphia, Phoenix, Pittsburgh, San Diego, San Francisco, and Seattle is limited to operations conducted under a code-share arrangement with American Airlines.

**Dismissal/Deferral:** We dismissed that portion of the exemption applications and the joint application for statements of authorization to the extent that they requested authority for services not provided for under the U.S.-Spain aviation agreement. Taking into account the state of our aviation relationship with Spain, including the absence of meaningful progress in our efforts to achieve an open-skies regime, we determined that it would not be consistent with the public interest to award the requested extrabilateral authority. Accordingly, we did not grant authority to serve the following U.S. points: Tampa and Washington (through Ronald Reagan Washington

National Airport);<sup>2</sup> or the following Spain points: Alicante, Bilbao, Jerez de La Frontera, La Coruna, Las Palmas, Sevilla, Valencia, and Vigo; or the following points beyond Madrid: Geneva, Porto, and Vienna; or the following gateway-gateway service: Miami-Barcelona.

We also dismissed that portion of the applications to the extent that they sought authority for service beyond Madrid to points in France. Under the April 1998 U.S.-France Memorandum of Consultations and initialed agreement, U.S. carrier opportunities to serve France under third-country code-share arrangements are limited. American does not currently hold authority for those services. Should American subsequently be authorized to conduct these services, the joint applicants would be free to reapply for the Spain-France code-share authorization sought here.

Furthermore, taking into consideration all of the circumstances of this case, including the related responsive pleadings, we determined that the public interest was best served if we deferred action on American's request insofar as it requested authority to engage in code-share services between Miami and points in Central America.

Finally, we determined that the concerns raised by the objecting carriers regarding other alliances involving American did not, in the circumstances presented, warrant our undertaking the review proposed or otherwise delaying award of the requested authority to the extent granted here.

**Remarks:** With respect to Air Europa's comments, we contemporaneously issued a notice granting those portions of the TWA and Air Europa applications to engage in code-share services in the U.S.-Spain market provided for in the current aviation agreement. We also contemporaneously issued Iberia's regional affiliates, Aviacion y Comercio and Air Nostrom Lineas Aeras de Mediterraneo the necessary underlying authority to conduct the authorized code-share services with American (Docket OST-98-3640).

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<sup>2</sup> The Aviation Agreement between the United States and Spain provides that a Spanish carrier may serve only one airport in the Washington/Baltimore area, and the Government of Spain has selected Dulles International Airport.

**AUTHORITIES GRANTED AMERICAN/AMERICAN EAGLE**

A. Exemption authority under 49 U.S.C. 40109 to engage in scheduled foreign air transportation in the following markets:

New York-Madrid, Chicago-Madrid, San Juan-Madrid

B. Statement of Authorization under 14 CFR Part 207 to place Iberia's designator code on American/American Eagle flights in the following markets:

|                 |                        |                      |
|-----------------|------------------------|----------------------|
| Miami-Madrid    | Miami-Dallas/Ft. Worth | Chicago-Minneapolis/ |
|                 | Orlando                | St. Paul             |
|                 | Houston                | New Orleans          |
| New York-Boston | Chicago-Atlanta        | Orlando              |
| Los Angeles     | Boston                 | Philadelphia         |
| Philadelphia    | Cleveland              | Phoenix              |
| Pittsburgh      | Dallas/Ft. Worth       | San Diego            |
| San Francisco   | Denver                 | San Francisco        |
|                 | Detroit                | Seattle              |
|                 | Houston                | St. Louis            |
|                 | Las Vegas              |                      |
|                 | Los Angeles            |                      |

**AUTHORITIES GRANTED IBERIA/REGIONAL AFFILIATES**

A. Exemption authority for Iberia under 49 U.S.C. 40109 to engage in scheduled foreign air transportation in the following markets:

Between Spain and Atlanta, Cleveland, Dallas/Ft. Worth, Denver, Detroit, Las Vegas, Minneapolis, New Orleans, Orlando, Philadelphia, Pittsburgh, Phoenix, San Diego, San Francisco, Seattle, and St. Louis.

B. Statement of Authorization under 14 CFR Part 212 to place American's "AA" designator code on Iberia's and its regional affiliates' flights in the following markets:

|                 |                   |                         |
|-----------------|-------------------|-------------------------|
| Madrid-New York | Madrid-Barcelona  | Madrid-Lisbon, Portugal |
| Chicago         | Malaga            | Rome, Italy             |
| Miami           | Palma de Mallorca |                         |
| San Juan        |                   |                         |

Barcelona-New York

**U.S. Carrier**  
**Standard Exemption Conditions**

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

**Foreign Air Carrier**  
**CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).